

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on April 7, 1999 at
10:07 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. John Hertel, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 515, 4/4/1999
Executive Action: None

HEARING ON HB 515

Sponsor: REP. LARRY HAL GRINDE, HD 94, Lewistown

Proponents: Riley Johnson, National Federation of Independent
Business
Geoff Feiss, Montana Telecommunications Association
Dick Crofts, Commissioner of Higher Education
Webb Brown, Montana Chamber of Commerce

Opponents: Tim Reardon, Department of Transportation

**Tim Burton, Lewis & Clark County, Chief
Administrating Officer**
**Kathleen Martin, Department of Public Health and
Human Services**
Bill Kennedy, Montana Association of Counties
Dick Griffith, Montana Airport Managers Association
Bill Fogarty, Port Authority, Butte
Lois Menzies, Department of Administration
Doug Kaercher, Hill County Commissioner
**Bud Clinch, Department of Natural Resources &
Conservation**
Alec Hansen, League of Cities and Towns
Mike Volesky, Conservation District
Jani McCall, City of Billings

Information: Mike O'Connor, Public Employment Retirement System
Carroll South, Board of Investments
Nancy Butler, State Fund

Opening Statement by Sponsor:

REP. LARRY HAL GRINDE, HD 94, Lewistown. The original bill was a tough privatization bill, which addressed the issue of government encroaching on the private sector. There were many letters, phone calls, etc., so I decided which parts I wanted to keep and which were negotiable. Therefore, the amended version of **HB 515**, which is before the Committee, has two parts: (1) Provision for an interim study of the effects of competition; (2) Retail sales by government entities, i.e. government could not sell something which could be physically held. An example was in Great Falls, there was a gentleman who had a compost plant to sell compost to the public. The city of Great Falls decided it should have a compost plant, so it could use the compost for its parks, recreational areas, i.e. its own city use. What ultimately happened was the city sold the compost on the market for less than the man in the private sector was selling his. The end result is the man in the private sector is almost out of business. The thing I'm looking at is government, retail-wise, should not be selling things which the private sector can sell.

Proponents' Testimony:

Riley Johnson, National Federation of Independent Business. We like **HB 515** the way it currently is. We support doing a study to see how real this is, how true it is and if can we do anything about it. We feel it can be productive and we look forward to

participating in any way we are asked. We would ask your support.

Geoff Feiss, Montana Telecommunications Association (MTA). He read his written testimony **EXHIBIT (bus75a01)**.

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Dick Crofts, Commissioner of Higher Education. We were one of the organizations which had conversations with the sponsor in advance of the House hearings of **HB 515**. I have an amendment **EXHIBIT (bus75a02)** which would make the exclusion of the university system explicit, as it is for other agencies listed in the bill.

Webb Brown, Montana Chamber of Commerce. We rise in support of this bill, as well. We have heard from a number of members, as well as those in the business community in competition with governmental entities, and we all want to see this considered in greater detail. We want to see what kind of competition there is, and what can be done to change it.

Opponents' Testimony:

Tim Reardon, Department of Transportation (DOT). The DOT has no particular problem with the study proposal of **HB 515**; however, our questions deal with the retail sales and competitive section. The bill does not necessarily limit its language to retail sales. In our program, sometimes there is the feature of providing materials to local governments, i.e. millings from paving surfaces, which do not meet standards for DOT, but are fine for cities and towns. In that case, DOT gives the millings to those entities. "Goods" is not defined in the bill, and it could include those millings. We also provide small amounts of de-icer to local government entities, which cannot buy in bulk or their supply runs out before the season is done. Our aeronautics division provides, at no charge, charts, maps, etc. That division also purchases runway lights, wind socks, etc., in bulk, which could fit into the definition of "goods". We lease property the Department has purchased for a maintenance site, and sometimes we lease that back to a local government, and sometimes we put it out as surplus property and selling it. That could come under the definition of "competition", which would put it under the intent of this bill. The idea of a study deserves merit, and DOT would have no objections; in fact, we have more questions, than opposition, to the bill because it does not define "goods".

Tim Benton, Lewis & Clark County Chief Administrator Officer.

The material **EXHIBIT (bus75a03)** I'm passing around is from MACo and I want to draw your attention to an advertisement for the surplus equipment for sale by Wibaux County. Under **HB 515**, this would not be legal. In 1989, the legislature directed the Department of Administration to create the federal and state surplus property program, and since then, the Department has become one of the best-run operations in the United States. From that program, we can get federal property for about 15 cents on the dollar, which is good business.

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Kathleen Martin, Department of Public Health and Human Services (DPHHS). She read her written testimony **EXHIBIT (bus75a04)**.

Bill Kennedy, Yellowstone County Commissioner & Montana

Association of Counties (MACo). We spoke against **HB 515**, which was tabled but now has come back again. Yellowstone County would still like to go on record as opposing the bill. We have to look at an area on the outskirts of Billings, our fire service area, for which we contract services with the city of Billings. We work with the city of Billings, offering services back and forth, and because we do not know what to expect, we stand in opposition to the bill. We do not have a problem with the study, but do have a problem with the bill as it now stands.

Rick Griffith, Montana Airport Managers' Association. I hope this is an unintended consequence, because airports were set up by the state legislature about 20 years ago to operate like a business and be less of a tax drain. In the Butte airport, within the last month, we opened a coffee kiosk because I could not find a contractor to take that business. We operate that on a donation basis. We also operate a large sand pit, which is recycled asphalt, and we offer it for sale to the community. In Butte, in the last 10 years, the drain on the local tax dollars went from \$300,000 per year to \$120,000, while some had no drain on the tax dollars, but survived on the revenues derived from sales and fees. Butte Airport competes on a daily basis with other airports and modes of transportation, so we have to operate like a business. The study is a good idea and we would like to participate so we can show we operate like a business.

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Bill Fogarty, Port of Montana Port Authority, Butte. He read his written testimony **EXHIBIT (bus75a05)**.

Lois Menzies, Department of Administration. She read her written testimony **EXHIBIT (bus75a06)**.

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Doug Kaercher, Hill County Commissioner. Our community fire districts and airports would suffer greatly, and perhaps not even be able to operate, without the use of state surplus property. We also cooperate between counties who have surplus equipment we can purchase. We also had concerns because we lease office space to the assessor, Department of Family Services and probation officer, and we need to see that continue being an effective operation for our counties. I urge your opposition to the bill.

Bud Clinch, Department of Natural Resources & Conservation

(DNRC). It is with some reluctance I stand in opposition to the bill, because just six years ago, I came here from the private sector; therefore, the philosophy of competition of government and private enterprise is one I personally endorse. However, during my tenure here, I have come to know those programs and understand the necessity for them. Within DNRC, we operate the State Nursery in Missoula, where we grow a variety of tree and plant species for conservation planting. We have marketed them throughout the 58 conservation districts, to private landowners for conservation plantings, i.e. shelter belts, windbreaks, wildlife habitat, etc. However, under **HB 515**, our Nursery would cease to exist. Also, we maintain a very active relationship with the private Nurseryman's Association; in fact, I have a letter which endorses our program and says they are not prepared to meet the need that is relative to the conservation plantings we provide.

Another concern is the language, "...does not apply to the renting, leasing, or subleasing of real property or personal property by one government entity to another government entity if the property has been rented or leased from private enterprise", because we are the state-wide wild fire protection agency, which has intricate agreements with local, county and federal agencies for equipment and personnel services. A strict interpretation of that language would not allow us to enter into those agreements among our federal partners.

We also are concerned about the reference to the subleasing of real property, which has ramifications to a number of issues. As a result of executive reorganization, we co-located three previous state agencies into a single building at the airport in Billings, which was leased from the city of Billings. A strict interpretation of the leasing of real property from one governmental entity to another could be construed to prevent us

from those arrangements. The bill language does preclude those agreements which are already in place; however, many such agreements are on the horizon, and those would be affected.

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Another issue is the management of school trust lands by DNRC. This is done mainly through a leasing program to both private farmers and ranchers and governmental entities, such as county governments. County governments lease land from us for gravel pits, airports, recreational complex, to name a few. Our interpretation of the language in **HB 515** would prevent us from doing that in the future.

The above consequences are unintentional, I am sure, but I would urge the Committee to take a hard look at them before acting on **HB 515**.

Alec Hansen, League of Cities and Towns. This bill is an enormously complicated and consequential issue which affects almost every operation of every level of government. It could cause the problems already alluded to this morning, and perhaps, hundreds of others in the future. The business community also has legitimate concerns, which we have tried to deal with on the local level for years. In other words, the issue of competition between government and business is very complicated. I can support, in fact, recommend, the authorization of this study because it affects business, government and cost of government. If this study is done, perhaps in two years, we can have a bill which would establish a fair cost-effective way of dealing with the competition between government and business. I would suggest putting the other section of **HB 515** "on ice" and go ahead with the study.

Mike Volesky, Montana Association of Conservation Districts. The conservation plantings deal with seedlings for reforestation, shelter belts or windbreaks, and not ornamental plantings. Those are provided by the private nurserymen, who make a profit from their sale. Also, county and/or state governments sometimes lease office space to conservation districts, or vice versa; however, under **HB 515**, this would be prohibited. Other things prohibited the conservation districts would include rental of equipment used for tilling, planting, demonstration of new technology, etc. We support the concept; however, the bill has gray area in the bill, which is where conservation districts operate in order to help people take care of their landscaping in a very non-threatening way. We do not want this to be inhibited by this bill.

Jani McCall, City of Billings. We also oppose this bill, but are willing to take part in the study to look at what the bill could do regarding government vs. private sector. Our main concern is Section 4.

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Informational Testimony:

Mike O'Connor, Public Employees' Retirement System (PERS). Our board administers eight trust funds which affect all public employees. In 1969, PERS purchased our office building, and our board and its staff leases the building from PERS as an investment. This bill would not allow that, which would have a negative effect on trust funds, which would, in turn, affect the members. I do not think this was the intention of **HB 515**.

Carroll South, Board of Investments. By law and Constitution, we must invest the state pension funds prudently, and part of that prudent philosophy is diversification. The larger the pension funds get, the more diversified they need to be. About three years ago, the Board began investing pension funds in equity real estate, through stock in real estate trusts and buildings. Currently, the Board, on behalf of the pension funds, leases about 103,000 square feet, here in Helena, to state agencies, private parties and federal agencies. The law gives clear authority to the Board to buy, hold, manage and sell real estate; however, it does not specifically say what to do with it while we hold it. An inadvertent consequence of this bill is Section 4, which says "...government entity may not engage in the...sale, offering for sale, rental, leasing...". It does not address space, and I am not sure it is goods or service; therefore, we are very concerned about the intent of this section of the bill.

Nancy Butler, State Fund. I do not think either the sponsor or I feel the bill applies to the State Fund. However, some of the words, such as "specifically authorized" could be interpreted as such. Also, I do not think insurance is "goods", but that should be clarified.

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Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA wondered why there were no proponents from the private sector. **REP. LARRY HAL GRINDE** said those people spoke in the House, but today they were busy earning a living and could not come.

SEN. MIKE SPRAGUE commented utility deregulation was in process, and if cities and/or towns were the provider of last resort, would the bill interfere with that. **REP. GRINDE** said they might be able to do that, under the public health and safety agency, if someone else was not providing it. His opinion and intention was he did not want the cities and/or towns to sell electricity; in fact, that should be done by the private sector.

SEN. DALE BERRY said the situation referred to in the previous question was a bill, which was going through the process. He wondered if, should **HB 515** pass, it would have to be amended. **REP. GRINDE** agreed that if the bill was already signed into law, it would be exempt from **HB 515**. He said any laws already on the books, even if not yet statutorily appropriated, would supercede this bill.

SEN. BERRY asked if that would not cancel most of the concerns by the opponents. **REP. GRINDE** affirmed.

SEN. GLENN ROUSH said in rural Montana, many services were shared. He was concerned government services going to the private entity could result in increased costs. **REP. GRINDE** said the governmental entity testimony did not give a cost analysis which compared the private sector cost analysis. The private sector drove the economy; government did not create new funding or new wealth.

SEN. ROUSH asked the sponsor if he would oppose eliminating Section 4 of the bill. **REP. GRINDE** said he wanted to create the philosophical debate on what the government should be doing, as opposed to the private sector. If the bill was reduced to a study, neither he nor the people of Montana had anything.

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SEN. SPRAGUE asked if cities and/or towns being the provider of last resort in utility deregulation, would be affected by this bill. **Alec Hansen** said he was not sure the bill would preempt cities and towns from selling energy to general consumers; however, if it did, he hoped it could be clarified. Cities and towns would have a role as the default supplier, and they would be needed in order to ensure a fair price for the consumer.

SEN. COCCHIARELLA commented there was not always success when private enterprise took over, and gave the janitorial service at the Capitol and the recent managed care situation as examples. She said the bill did not address cost, quality or performance, and wondered how Montana citizens could be guaranteed they were getting something at the least cost or highest quality. **REP.**

GRINDE said it still came down to the philosophical debate, though he agreed government needed to play some role in our lives. However, he did not think there was one Committee member who did not think government had gone too far, in at least one area. He agreed with her example of the private managed care company and said he felt government, and not the private sector, should take care of mental health. His argument, though, was government was getting into retail and the private sector profit. He reiterated the philosophical debate was when the saturation line would be drawn, i.e. when there were more people working for government than in the private sector. He stated we were close to the line where the private sector could no longer afford government, and if it was not stopped at the Committee level, there would be a collision.

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Closing by Sponsor:

REP. LARRY HAL GRINDE. None of the opponents own those private businesses, where owners are trying to make an honest, decent living by selling a product. They could not take time from their work to come here to support this bill. Most of the concerns can be addressed by the answer to **SEN. BERRY's** question. There is confusing language regarding K-12, and I will bring an amendment to fix that. Also, I would like to bring an amendment to add "museums and art centers" to the exemptions. As for school trust lands, it was not my intention to include them in the bill, and I will take a closer look to make sure they are exempt. There is a problem, and the Committee will have to decide whether to address it now or later.

ADJOURNMENT

Adjournment: 11:35 A.M.

SEN. JOHN HERTEL, Chairman

JANICE SOFT, Secretary

JH/JS

EXHIBIT (bus75aad)